

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JENNIE COURTNEY, ETC.,)
)
Plaintiff,)
)
vs.) Case No. 2:06-cv-600-MHT
)
ANTHONY CLARK, et al.,)
)
Defendants.)

HOLLIS & SPANN, INC.'S
MOTION FOR LEAVE TO FILE A REPLY TO
PLAINTIFF'S RESPONSE AND BRIEF IN OPPOSITION TO HOLLIS & SPANN'S
MOTION FOR SUMMARY JUDGMENT

Comes now the defendant Hollis & Spann, Inc. and moves this Honorable Court for leave to reply to the Plaintiff's Response and Brief in Opposition to this defendant's Motion for Summary Judgment previously filed in this cause and as grounds for said motion shows unto this Honorable Court the following:

1. On August 9, 2006, the parties conducted a Rule 26(f) meeting of the parties and thereafter submitted their report of the parties' planning meeting. (Doc. 18). On August 21, 2006, this Court entered its Uniform Scheduling Order for this case.
2. On January 8, 2007, Hollis & Spann filed a Motion for Summary Judgment (Doc. 58) and its Narrative Statement of Undisputed Facts and Brief in Support of Motion for Summary Judgment (Doc. 59).
3. On January 11, 2007, this Court entered an Order (Doc. 61) setting the Motion for Summary Judgment for submission, without oral argument, on January 23,

2007 with any opposing brief and evidentiary materials due by that date.

4. On January 23, 2007, the plaintiff filed her Response and Brief in Opposition to Defendant Hollis & Spann, Inc.'s Motion for Summary Judgment (Doc. 66), wherein the plaintiff, in essence, asserts that by considering this motion for summary judgment she will be deprived of the opportunity to develop facts in support of her case (Doc. 66, p. 3).

5. Hollis & Spann requests leave to reply to provide the Court with Hollis & Spann's Voluntary Disclosure where months ago it offered to make documents including the plans available to plaintiff's counsel upon request and to further request this Court's consideration of Hollis & Spann's properly supported motion for summary judgment.

WHEREFORE, THE PREMISES CONSIDERED, Hollis & Spann respectfully requests that this Honorable Court grant it leave to file the reply attached hereto as Exhibit A.

Respectfully submitted,

/s/STEVEN K. HERNDON (HER028)
Attorney for Defendant Hollis & Spann, Inc.

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steve@ghhclaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 29th day of January, 2007 electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which will send notification of each filing to the following counsel of record, and I have placed a copy of same in the United States mail, postage prepaid and properly addressed to each defendant inmate this 29th day of January, 2007:

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Attorneys for Defendants Anthony Clark,

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/s/Steven K. Herndon
COUNSEL

Exhibit A

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Plaintiff,)
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)
Defendants.)

HOLLIS & SPANN, INC.'S
REPLY BRIEF REGARDING ITS MOTION FOR SUMMARY JUDGMENT

Comes now the defendant Hollis & Spann, Inc. and hereby submits this reply brief regarding its request for summary judgment in this action and in support thereof states as follows:

On January 8, 2007, Hollis & Spann filed its Motion for Summary Judgment (Doc. 58) and its Narrative Statement of Undisputed Facts and Brief in Support thereof (Doc. 59) raising dispositive legal grounds why summary judgment should be granted in its favor at this juncture. Under *Rule 56(b)* of the *Federal Rules of Civil Procedure*, a defendant may move for summary judgment "at any time," and the plaintiff's response fails to demonstrate how postponement would enable her to defeat Hollis & Spann's right to summary judgment. *See generally, Reflectone, Inc. v. Farrand Optical Company, Inc.*, 862 F.2d 841, 844 (11th Cir. 1989).

In the response and brief in opposition to Hollis & Spann's motion for summary judgment, the plaintiff asserts that undertaking consideration of Hollis & Spann's motion

for summary judgment would deprive her of an opportunity to “develop facts” in support of her case. (Doc. 66, p. 2). Although plaintiff has, as of January 4, 2007, served interrogatories and requests for production on Hollis & Spann, this defendant has made all of its Voluntary Disclosures (including the plans) available upon request since September 11, 2006. (See Exhibit 1). Plaintiff should not be allowed to delay the Court’s consideration of Hollis & Spann’s properly supported motion for summary judgment based upon the plaintiff not having evidence which has been available since September 2006.

Furthermore, the plaintiff’s response fails to address or demonstrate how the plans will enable her to defeat Hollis & Spann’s motion for summary judgment under the alternative grounds outlined in its brief. As this Court has explained, “a party opposing summary judgment must inform the court by affidavit of the particular facts the party expects to discover and explain to the court how these facts will enable that party to rebut the summary judgment motion by creating a genuine issue of material fact.” *Clark v. AmSouth Mortgage Co., Inc.*, No. 06-cv-747-MHT, 2006 U.S. Dist. LEXIS 42774 (M.D. Ala. June 23, 2006); see also, *Shelby v. American Colloid Co., Inc.*, No. 04-cv-489-T, 2005 U.S. Dist. LEXIS 40679 (M.D. Ala. March 1, 2005) (plaintiff may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts, but rather he must specifically demonstrate how postponement of a ruling on a motion will enable him, by discovery or other means, to rebut the movant’s showing of the absence of a genuine issue of fact). The plaintiff files no *Rule 56(f)* motion nor does she demonstrate how any fact she believes may be discovered would allow her to raise a

genuine issue of material fact. *See also, Crouch v. AmSouth Bank*, No. 06-cv-111-MEF, 2006 U.S. Dist. LEXIS 75556 (M.D. Ala. Oct. 17, 2006) (noting that the parties had more than five months to conduct discovery before the first pending motion for summary judgment was filed); *Thompson v. Geo Marine*, No. 06-cv-420-WHA, 2006 U.S. Dist. LEXIS 65945 (M.D. Ala. Sept. 14, 2006) (noting the plaintiff's failure to file a Rule 56(f) motion or to demonstrate during the three weeks given to respond to the motion that there were specific facts showing there to be an issue of fact for trial).

First, plaintiff fails to demonstrate how the plans would create an issue of fact under *McFadden* especially when Alabama Code § 12-16-191 provides that it is the State's responsibility, through its empaneled grand juries, to inspect and determine the adequacy of jails and none of the quarterly grand jury inspection reports (submitted as Exhibit C in the summary judgment motion) are critical of Hollis & Spann. (Doc. 59, pp. 7-9).

Second, the plaintiff fails to explain how the plans would enable her to circumvent Alabama's well established rule that there is no duty to protect one from the criminal acts of a third party. (Doc. 59, pp. 10-12). In this case, the essence of the plaintiff's complaint is that escaped prisoners Oscar Doster and James Harnage killed Mr. Courtney. Waiting for additional discovery and/or being provided with a copy of the plans will not in any way assist the plaintiff in overcoming this well established rule of law that there is no duty to protect one from the criminal acts of another.

Third, the plaintiff has not shown how any act or omission on the part of Hollis & Spann could have proximately caused or contributed in causing Mr. Courtney's death.

The criminal acts, which are an essential element of the plaintiff's claim, would constitute an efficient intervening cause which would shield Hollis & Spann from any claims of liability. (Doc. 59, pp. 12-14).

Fourth, the Covington County Commission accepted Hollis & Spann's work on or around March 27, 1996, and the plaintiff offers no explanation as to how she could overcome Hollis & Spann's statute of limitations defense based upon Alabama Code § 6-5-221. (Doc. 59, pp. 15-16).

Fifth, the plaintiff's response and brief in opposition fails to address how any claims against Hollis & Spann would not be defeated by the doctrines of res judicata and collateral estoppel based upon Hollis & Spann's favorable summary judgment ruling in the "*Fowler*" lawsuit which arose out of a 2002 escape from the facility by inmates Doster and Phillips. (Doc. 59, pp. 16-18).

The plaintiff provides no *Rule 56(f)* affidavit and the spirit of her response and brief in opposition fails to set forth with particularity the facts which she would expect to discover and how those facts would create a genuine issue of material fact precluding summary judgment. There is no meritorious reason to delay consideration of this properly filed motion for summary judgment where the plaintiff has failed to demonstrate how the discovery she seeks will enable her to defeat summary judgment and where the information she seeks has been available since September 2006.

/s/STEVEN K. HERNDON (HER028)
Attorney for Defendant Hollis & Spann, Inc.

OF COUNSEL:

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I hereby certify that I have on this the 29th day of January, 2007 electronically filed the above and foregoing with the Clerk of the Court using the CM/ECF system which will send notification of each filing to the following counsel of record, and I have placed a copy of same in the United States mail, postage prepaid and properly addressed to each defendant inmate this 29th day of January, 2007:

Attorneys for Plaintiff

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Attorneys for Defendants Anthony Clark,

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Mr. Gary L. Willford, Jr.
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Attorney for Defendant

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Attorneys for Dickey & Associates, Inc.

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Defendants:

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Oscar Roy Doster AIS #177168
P. O. Box 150
Mount Meigs, AL 36057

/s/Steven K. Herndon
COUNSEL

Exhibit 1

Sherri Horton

From: Sherri Horton
Sent: Monday, September 11, 2006 5:37 PM
To: Britt Bethea (E-mail); David Greene (E-mail); Will Phillips (E-mail); Daryl Masters (E-mail); Gary Willford (E-mail); Bert Pittman Taylor (E-mail); Alan Hargrove (E-mail); Brett Garrett (E-mail)
Cc: Steve Herndon
Subject: Voluntary Disclosure Statement

Gentlemen:

Attached hereto is Hollis & Spann's Voluntary Disclosure Statement in Courtney v. Anthony Clark, et al., Civil Action No. 2:06-CV-00600-MHT. If you would like to have copies of the documents referred to in Item B., we will be more than happy to provide you with copies along with an invoice for costs in producing the same. Please let us know whether you are interested or not within the next five days, so we can know how many sets to obtain when we send the originals out for copying.

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ATTORNEY/CLIENT COMMUNICATION -- This electronic message contains confidential and legally privileged information from the law firm of Gidere, Hinton, Herndon & Christman intended only for the addressee(s). If you are not the intended recipient or the employee/agent responsible for delivering this electronic message to the intended addressee (s) of this transmission, please be aware that any review, disclosure, copying, distribution, or use of this electronic message is strictly prohibited. If you have received this transmission in error, please notify this firm immediately by telephone (334) 834-9950 or by electronic mail (sherri@ghhclaw.com) and delete this message. Thank you.



Hollis&Spann
Voluntary Disclos...

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Internal Virus Database is out-of-date.
Checked by AVG Free Edition.
Version: 7.1.394 / Virus Database: 268.10.0/388 - Release Date: 7/13/2006

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JENNIE COURTNEY, ETC.,)
vs. Plaintiff,)
vs.) Civil Action No.: 2:06-CV-00600-MHT
ANTHONY CLARK, et al.,)
Defendants.)

VOLUNTARY DISCLOSURE STATEMENT

Comes now the defendant Hollis & Spann, Inc. and in compliance with the Court's Uniform Scheduling Order hereby provides the following voluntary disclosure information requested by the Court:

A. The individuals who may have discoverable information would appear to include the following:

1. Hayne Hollis
President
Hollis & Spann, Inc.
116 Loftin Road
Dothan, AL 36302
(334) 793-4444

2. John Eiland
Project Manager
Hollis & Spann, Inc.
116 Loftin Road
Dothan, AL 36302
(334) 793-4444

3. Wade Flowers
Project Superintendent
Hollis & Spann, Inc.
2669 County Road 239
Elba, AL 36323
(334) 897-5521
4. County Commissioner Greg White
(and/or other former or current members of the
Covington County Commission)
P. O. Box 188
Andalusia, AL 36420
(334) 428-2610
5. Brenda Petty, Administrator
Covington County Commission
P. O. Box 188
Andalusia, AL 36420
(334) 428-2610
6. Lynn E. Seymour
Seymour & Lisenby, Inc.
Jernegan Road
Ozark, AL 36360
(334) 774-4244
7. Wilbur Mitchell
(Former Sheriff and now Jail Administrator)
Covington County Commission
P. O. Box 188
Andalusia, AL 36420
(334) 428-2610
8. Bill McClain
(Former County Engineer)
McClain Engineers, Inc.
P. O. Box 729
105 Choctaw Street
Andalusia, AL 35420
(334) 222-4388

9. Corporate Representative
Darden Engineering
P. O. Box 126
Dadeville, AL 36856
10. James Dickey and/or Corporate Representative
Dickey & Associates
1160 S. Lawrence Street
Montgomery, AL 36104
(334) 263-6451
11. Mike Delaplane and/or Corporate Representative
Black Creek Integrated
2130 AE Moore Drive
Moody, AL 35004
12. Paul Looney, Jack Ozure and/or Corporate Representative
Willo Products Company, Inc.
P. O. Box 1349
Decatur, AL 35601
(256) 353-7161
13. Sheriff Anthony Clark
290 Hillcrest Drive
Andalusia, AL 36420
14. Former Jail Administrator Jerry Wayne Edgar
P. O. Box 802
Andalusia, AL 36420
15. Chief Deputy Walter Inabinett
982 5th Street
Florala, AL 36442
16. Any officers or jail facility personnel working at the time of the alleged escapes.
17. Any individual called to testify or listed as a witness in any criminal prosecution for any alleged wrongdoing arising out of or relating to any escape from the facility.

18. Any party listed in this lawsuit.
19. Any witness who may have relevant information.

B. Documents defendant may use to support its defenses:

1. Contract between Covington County Commission and Hollis & Spann;
2. Project Manual for the New Jail for Covington County;
3. The Plans for the New Jail for Covington County, Andalusia, AL;
4. Willo Products Detention Equipment Shop Drawings;
5. Notice to Proceed, Preconstruction Conference, Architects Field Reports, Inspection Reports, and Certificate of Substantial Completion dated 4-1-96;
6. Willo Products Subcontract;
7. Willo Products Security Hardware Submittal;
8. End of Year Inspection Punchlist;
9. Photographs;
10. June 10-14, 1996 Grand Jury Report;
11. Certified Copies of Pertinent Parts of CV-04-251, filed in the Circuit Court of Covington County, Alabama, styled "Angela E. Fowler, etc., v. Sheriff Anthony Clark, et al." (not yet obtained);
12. Any charge, indictment, statement, document, photograph, or other item related in any way to any criminal prosecution for alleged wrongdoing associated with or relating to an escape from the facility (not yet obtained).

Defendant reserves the right to supplement this response. These documents are in the offices of Steven K. Herndon and can be inspected and/or copied upon request.

C. Computation of Damages:

Not applicable.

D. Any applicable insurance agreement to satisfy judgment or indemnify:

A copy of the applicable policy will be produced.

/s/Steven K. Herndon
STEVEN K. HERNDON (HER028)
Attorney for Defendant Hollis & Spann, Inc.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was served on the following by e-mailing the same to all counsel of record and placing a copy of same in the United States mail, postage prepaid and properly addressed to defendant inmates this 11th day of September, 2006:

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/s/Steven K. Herndon

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